

BEFORE THE STATE OF MONTANA
SUPERINTENDENT OF PUBLIC INSTRUCTION

WANDA KIRN and JACKIE GRAINGER)
Appellant,) OSPI 34-82
-vs-)
POPLAR SCHOOL DISTRICT #9) DECISION AND ORDER
ROOSEVELT COUNTY TRANSPORTATION)
COMMITTEE,)
Respondent.)

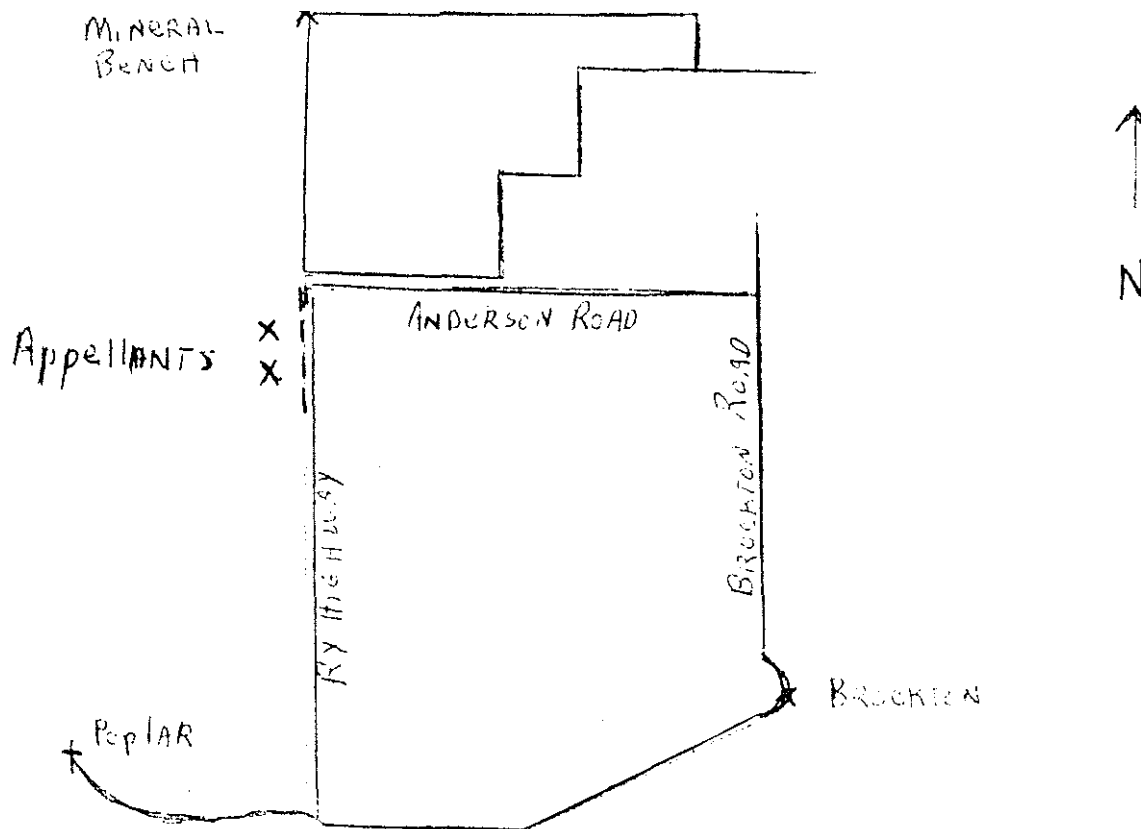
This is an appeal from the findings of fact, conclusions of law and order rendered by the Roosevelt County Transportation Committee which was prepared by the Chairman of the Roosevelt County Transportation Committee, the Roosevelt County Superintendent of Schools, affirming the Poplar District Board of Trustees' Decision denying Appellant's request for a change in bus route.

Appellants requested that the Poplar District Board of Trustees change the bus route in order to pick up and transport their children to the Mineral Bench School, which is north of the Poplar School District. The Superintendent of Poplar School District #9, Mr. Jack Kober, wrote a letter to Appellant Kirn and stated that the requested change had been denied and that the next regular school board meeting for an appeal would be July 12, 1982.

On August 9, 1982 the Poplar Board of Trustees, meeting in regular session, reconsidered the bus extension request of Appellants. The Board of Trustees once again denied the request to change the bus route. On August 12, 1982 Appellant Kirn and Grainger appealed the decision of the Poplar Board of Trustees to the Roosevelt County Transportation Committee. The appeal was filed with the County Superintendent of Schools requesting a hearing under Section 20-10-132 (d) MCA.

The County Transportation Committee conducted a hearing on September 17, 1982 regarding the requested extension, and the decision of the Board of Trustees of

Poplar School District #9 was affirmed. For purposes of clarification a map of this area is provided herein.



At the hearing, Appellants raised the following reasons for their request for an extension of the bus route. They stated that Wesley Kirn would be in kindergarten during the current year and would attend Mineral Bench School. Brad Grainger, also a son of Appellant, would be attending Mineral Bench School as a second grade student. The Anderson road is the southern boundary of the Mineral Bench bus route. The Kirn residence is one mile

south of this route. "RY" highway and Appellent Grainger are approximately another one-half mile south.

Appellants argued that, because of their children's ages, it would be very inconvenient for them to send their children to the Poplar School District, whereas Mineral Bench kindergarten would be every other day and would allow the children to ride the bus to and from school. Further, Appellants indicated they would have additional children next year and would continue to face this transportation problem.

Appellants argued that the Mineral Bench School is "somewhat closer" to their homes and that the bus route extension would better meet their needs. They asked the County Transportation Committee to reverse the Board.

The Board of Trustees of Poplar School District stated that, while they did not deny Appellants permission to send their children to Mineral Bench School or to Poplar, they felt that a precedent would be set by sending the shuttle bus from the turn off to the Appellants' residences. Poplar School Board argued that regular bus route #3 passes the shuttle bus at the Anderson turnoff and goes by the residences of the two Petitioners, then south to the Poplar School. The Board of Trustees further argued that there would be a duplication of services by allowing two school buses to travel the same bus route. The Board of Trustees also argued that it would not cause an undue hardship on either Appellant to have them transport their children from their residences to the Anderson road to meet the shuttle bus.

The case before the Transportation Committee was conducted without the benefit of counsel for either party. A reading of the transcript indicates that the information necessary to resolve the dispute was presented to the County Transportation Committee on an informal basis. Further, neither Appellants nor Respondents have had the benefit of counsel in presenting the appeal to the State Superintendent, nor were written briefs submitted to this State Superintendent.

Appellant argues that to drive the school bus an additional $1\frac{1}{2}$ to 2 miles would not be that great a distance off the bus route to the Mineral Bench School. Petitioners argue that their kindergarten child attends Mineral Bench School every other day and that it would be a great inconvenience for the Appellants to transport their children to meet the shuttle bus which transports their children to the Mineral Bench school. If the Mineral Bench school bus came down the route as requested, the children would be living within one-half mile of the school bus and could walk to the school bus from home.

During the hearing the school district agreed with the statements of the parents. However they argued that a change would create a duplication of services which **is** a problem "we always run into whenever the transportation committee meets." The school board argued that the requested change was not realistic and not feasible from an economic standpoint. The Board of Trustees also expressed an understanding of the fact that if the kindergarten students had to attend the half-day kindergarten in Poplar, it would mean that the child would either have to be picked up at noon or brought to town separately from the bus-transported children. The every other day kindergarten schedule at Mineral Bench would be advantageous to the Appellants. Respondent Board of Trustees also indicated that it does not dispute the fact that Appellants could send their children to the Mineral Bench School. The Board of Trustees did not agree that it should have to provide the bus service which would be a duplication of services.

Respondents argued that if the school district started running two buses over the same route in order to accommodate some youngsters, it would have to do the same for students throughout the county.

In the Notice of Appeal filed with this office, Appellants present two issues, summarized below:

1. Whether the County Transportation Committee erred in allowing the Poplar Board of School Trustees to present a reason for the bus route denial that had not been pre-

viously explained to Appellants. Appellants argue that raising the "duplication of services" argument before the County Transportation Committee did not provide Appellant the ability to respond to the argument at the hearing and as such was error.

2. Whether the District Superintendent of the district involved in a controversy may sit and vote as a member of the County Transportation Committee. Appellants argue that Section 20-10-131 (2) requires only five members to satisfy the minimum requirements for the County Transportation Committee to conduct such a hearing.

Concerning the first issue, the Rules of Procedure for all School Controversies provide that a controversy such as this is a determination of the legal rights, duties or privileges of a party (see Section 10.6.102 ARM). Once a controversy begins, it is the responsibility of all parties to be prepared for the hearing. One such means of preparing for the hearing is the use of discovery rules. The discovery rules in the Rules of Controversy are found in Sections 10.6.109 through 10.6.113. Discovery means the ability to find out what the other party will present at the hearing stage. Section 10.6.111 ARM states in part:

(1) Unless otherwise limited by order of the county superintendent, the scope of discovery is as follows:

(a) in general, parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible items and the identity and location of persons having knowledge of any discoverable material;

(b) a party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for hearing.

The issue of inability to determine what will be presented at a hearing was presented in another case, Alhquist et al. v. School District #2, Yellowstone County

et al., Cause No. DV-82-887. The District Court Judge ruled that the discovery method was available to all parties and that if a party failed to use such discovery method and one party presents information at the hearing, then this is not error on the part of the County Transportation Committee. In this case, the Superintendent of Poplar School District raised the issue of duplication of services. It is Appellants' contention that the duplication of service issue was not raised at the Board of Trustees' hearing. Although the State Superintendent cannot comment on the use of such information, not disclosed before the hearing, it finds no error on the part of the County Transportation Committee in considering such information in its findings of fact, conclusions of law and order. All parties have the opportunity to discover what the party will say prior to any hearing through the use of the discovery rules, found in the Rules of Procedure for all School Controversy Contested Cases.

The second issued raised by the Appellants in this case is that the District Superintendent voted on the matter as a member of the County Transportation Committee.

Section 20-10-131 states:

County transportation committee membership. (1) To coordinate the orderly provision of a uniform transportation program within a county under the transportation law, board of public education transportation policies, and the transportation rules of the superintendent of public instruction, there shall be a county transportation committee created in each county of the state of Montana. The membership of the county transportation committee shall be:

- (a) the county superintendent;
- (b) the chairman of the board of county commissioners or a member of such board designated by the chairman;
- (c) a trustee or district employee designated by the trustees of each high school district of the county;
- (d) one representative from each high school district of the county who is a trustee of an elementary district encompassed within the high school district and who has been selected at a meeting of the trustees of such elementary districts: and
- (e) a representative of a district of another county when the transportation services of such a

district are affected by the actions of the transportation committee, but such a representative shall have a voice only in matters affecting transportation within such district or by such district.

(2) The county transportation committee shall have at least five members, and if this minimum membership cannot be realized in the manner prescribed in subsections (1)(a) through (1)(d) above, the county superintendent shall appoint a sufficient number of members to satisfy the minimum membership requirement.

(3) The county superintendent shall be the chairman of the county transportation committee, and a quorum shall consist of a majority of the membership. The county transportation committee shall meet on the call of the chairman or any three members of such committee.

Section 21-10-132 states:

Duties of the county transportation committee. (1) It shall be the duty of the county transportation committee to:

(a) establish the transportation service areas within the county, without regard to district boundary lines, which will define the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program;

(b) approve, disapprove, or adjust the school bus routing submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1)(a);

(c) approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation due to isolated conditions of the eligible transportee's residence; and

(d) conduct hearings to establish the facts of transportation controversies which have been appealed from the decision of the trustees and act on such appeals on the basis of the facts established at such hearing.

(2) After a fact-finding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal such decision to the superintendent of public instruction who shall render a decision on the basis of the facts established at the county transportation committee hearing.

(3) The trustees of any district which objects to a particular school bus route or transportation service area to which it has been assigned may request a transfer to another school bus route or transportation service area. The county transportation committee may transfer the territory of

such district to an adjacent district's transportation service area or approved school bus route with the consent of such adjacent district. When the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of such district be transferred for school bus transportation purposes to such consenting, adjacent district. When a satisfactory petition is presented to the trustees, the trustees shall call an election in accordance with 20-20-201 for the next ensuing regular school election day. Such election shall be conducted in accordance with the school election laws. If a majority of those voting at such election approve the transfer, it shall become effective on July 1 of the ensuing school fiscal year.

(4) Unless a transfer of a district from one transportation service area or approved school bus route to another such area or route is approved by the county transportation committee and the superintendent of public instruction, the state transportation reimbursement shall be limited to the reimbursement amount for school bus transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils.

A close examination of both statutes indicates that the membership of the county transportation committee is mandatory. The District Superintendent represented the high school district of the county and therefore fulfilled the capacity of subsection c of section 20-10-131 of Montana Codes Annotated. It appears that the intent of the legislature was to allow the County Transportation Committee to be made up of several members, including the individual district in which the transportation dispute arises. In other words, the party in a controversy may very likely also be represented on the County Transportation Committee. In most instances and in all the cases which have come before this State Superintendent this has been the case. This situation cannot be avoided. Therefore, in the absence of a direct statutory prohibition, an individual or a district representative who is a Respondent or an Appellant in a County Transportation

Controversy may also sit on the transportation committee and vote on all matters. This State Superintendent finds no error in allowing a member of the County Transportation Committee to also represent a district. The County Transportation Committee is made up of at least five members, and those five members would provide sufficient check on one vote which might be adverse to the appealing party.

Under the Rules of Controversy and the Standards of Review on the Appellate Procedure of Standard of Review set out in 10.6.125 of the Administrative Rules of Montana, the State Superintendent may not substitute his judgment for that of the County Transportation Committee as to the weight of the evidence on question of fact.

The State Superintendent may affirm the decision of the County Transportation Committee or remand the case for further proceedings or refuse to accept the appeal on the grounds that the State Superintendent fails to retain proper jurisdiction on the matter. The State Superintendent may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the findings of fact and conclusions of law and order are

- (a) in violation of constitutional or statutory provisions
- (b) made upon unlawful procedure
- (c) affected by other error of law.

This State Superintendent finds no irregularities in procedure substantial enough to prejudice the Appellant's rights or to require a reversal of the County Transportation Committee.

This State Superintendent does recommend, however, that the County Transportation Committee examine future transportation service areas in light of affected residences. All parties to this appeal are to be complimented on the manner in which they acted at the hearing before the County Transportation Committee. Although relief is not granted to the Appellant in this action, they are to be complimented for their efforts in attempting to resolve the matter with the Board of Trustees and the County Transportation Committee. Perhaps alternative scheduling

for the elementary students, both at Poplar School District #9 and Mineral Bench School District, may be resolved at the local level. This State Superintendent sympathizes with individuals in rural areas and with school boards attempting to provide transportation services to those areas. The geographic area and distances of Montana require close cooperation between neighboring school districts in order to provide services to rural Montanans.

The County Transportation Committee findings of fact, conclusions of law and order are affirmed.

DATED this 29th day of April, 1983.